### IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

SCOTT MASALSKI

118 Grain Lynn Drive Levittown, PA 19057

CIVIL ACTION

Plaintiff, : I

v.

DOCKET NO.:

SILA SERVICES, LLC : 290 Hansen Access Road :

King of Prussia, PA 19406

JURY TRIAL DEMANDED

.

Defendant.

### **CIVIL ACTION COMPLAINT**

Scott Masalski (*hereinafter* referred to as "Plaintiff," unless indicated otherwise), by and through his undersigned counsel, hereby avers as follows:

### **INTRODUCTION**

1. This action has been initiated by Plaintiff against Sila Services, LLC (hereinafter referred to as "Defendant") for violations of the Americans with Disabilities Act, as amended ("ADA" - 42 USC §§ 12101 et. seq.), the Pennsylvania Human Relations Act ("PHRA"), and applicable Pennsylvania common law. Plaintiff asserts, inter alia, that he was discriminated against and unlawfully terminated by Defendant. As a direct consequence of Defendant's unlawful actions, Plaintiff seeks damages as set forth herein.

### JURISDICTION AND VENUE

2. This Court may properly maintain jurisdiction over Defendant because Defendant's contacts with this state and this judicial district are sufficient for the exercise of jurisdiction over

<sup>&</sup>lt;sup>1</sup> Plaintiff's claims under the PHRA are referenced herein for notice purposes. Plaintiff intends to amend his complaint to include claims pending before the PHRA once such claims are fully and administratively exhausted. These claims will identically mirror his ADA claims already filed herein.

Defendant to comply with traditional notions of fair play and substantial justice, satisfying the standard set forth by the United States Supreme Court in *Int'l Shoe Co v. State of Washington*, 326 U.S. 310 (1945), and its progeny.

- 3. This action is initiated pursuant to a federal law. The United States District Court for the Eastern District of Pennsylvania has original subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 because the claims arise under the laws of the United States. This Court has supplemental jurisdiction over Plaintiff's state law claims because they arise out of the same circumstances and are based upon a common nucleus of operative fact.
- 4. Venue is properly laid in this District pursuant to 28 U.S.C. §§ 1391(b)(1) and (b)(2), because Defendant resides in and/or conducts business in this judicial district and because a substantial part of the acts and/or omissions giving rise to the claims set forth herein occurred in this judicial district.
- 5. Plaintiff is proceeding herein (in part) under the ADA after properly exhausting all administrative remedies with respect to such claims by timely filing a Charge of Discrimination with the Equal Employment Opportunity Commission ("EEOC") and by filing the instant lawsuit within ninety ("90") days of receiving a notice of dismissal and/or right-to-sue letter from the EEOC.

#### **PARTIES**

- 6. The foregoing paragraphs are incorporated herein their entirety as if set forth in full.
- 7. Plaintiff is an adult who resides at the above-captioned address.
- 8. Sila Services, LLC is a regional HVAC, plumbing, indoor air quality, and home automation systems company located at the above-captioned address.

8. At all times relevant herein, Defendant acted through its agents, servants and employees, each of whom acted at all times relevant herein in the course and scope of their employment with and for Defendant.

#### FACTUAL BACKGROUND

- 9. The foregoing paragraphs are incorporated herein their entirety as if set forth in full.
- 10. Plaintiff is a 49-year-old male.
- 11. Plaintiff was hired by Defendant in or about June of 2020. In total, Plaintiff was employed by Defendant for approximately 4 months.
- 12. During this timeframe, Plaintiff was employed by Defendant as a heating and air conditioning installer (among other duties or tasks as directed at times), and was supervised by Garrett (Last Name Unknown) (hereinafter referred to as "Garrett") and Mike (Last Name Unknown) (hereinafter referred to as "Mike") Foreman.
- 13. During his tenure with Defendant, Plaintiff was a hard-working employee who performed his job well.
- 14. On or about July 14, 2020, Plaintiff suffered serious work-related injuries. Specifically, Plaintiff was carrying a heavy coil with Mike when Plaintiff fell through the bedroom ceiling of a client's home.
- 15. As a result, Plaintiff suffered significant injuries to his hands, leg and other complications.
- 16. Due to his aforesaid work-related injuries/health conditions, Plaintiff was limited in his ability (at times) to perform some daily life activities, including but not limited to lifting, general labor, bending his fingers, pushing, and pulling (among other daily life activities).

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- 17. Despite his aforementioned health conditions and limitations, Plaintiff was still able to perform the essential duties of his job well with Defendant; however, Plaintiff did require reasonable medical accommodations (discussed further *infra*).
- 18. For example, while Plaintiff tried to continue working, he was ultimately placed on light duty pursuant to the doctor's order following his filing of a worker's compensation claim, but because Defendant's management Garrett said light duty was "unavailable," thus, Plaintiff had no other choice but to take a short medical leave of absence to treat his work-related injuries/health conditions (an ADA reasonable accommodation).
- 19. Plaintiff ultimately returned to work on or about September 21, 2020 after being cleared to work (and having been approved by Defendant for a medical leave).
- 20. Thereafter, Plaintiff was terminated from Defendant in early October 2020, within approximately 2 weeks of returning to work.
- 21. Plaintiff was informed by Garrett that he was terminated due to lack of work and thus, Plaintiff was laid off.
- 22. However, Plaintiff's termination was completely pretextual as: (1) the termination followed in extremely close temporal proximity to Plaintiff's injuries and requested accommodation (medical leave); (2) Plaintiff's same role was advertised on Indeed (and on-line) shortly before (about a week before) Plaintiff's termination; and (3) Plaintiff was hired only months earlier when it was known there was more than sufficient work.
- 23. Plaintiff believes and therefore avers that he was terminated because of (1) his known, perceived, and/or record of disabilities; (2) his claim for worker's compensation benefits; and (3) in retaliation for requesting/utilizing reasonable medical accommodations.

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#### **COUNT I**

# <u>Violations of the Americans with Disabilities Act, as amended ("ADA")</u> ([1] Actual/Perceived/Record of Disabilities Discrimination; [2] Retaliation)

- 24. The foregoing paragraphs are incorporated herein in their entirety as if set forth in full.
- 25. Plaintiff suffered from serious health conditions, which (at times) limited his ability to perform some daily life activities, including but not limited to lifting, general labor, bending his fingers, pushing, and pulling (among other daily life activities).
- 26. Despite his aforementioned health conditions and limitations, Plaintiff was still able to perform the essential duties of his job well with Defendant; however, Plaintiff did require reasonable medical accommodations at times in the form of a medical leave of absence (in addition to filing a workers compensation claim).
- 27. Plaintiff was terminated from Defendant in early October 2020, within approximately 2 weeks of returning to work purportedly due to lack of work and thus, Plaintiff was laid off.
- 28. However, Plaintiff's termination was completely pretextual and instead he was terminated because of (1) his known, perceived, and/or record of disabilities; (2) his claim for worker's compensation benefits; and (3) in retaliation for requesting/utilizing reasonable medical accommodations.
- 29. These actions as aforesaid constitute unlawful discrimination, and retaliation under the ADA.

# COUNT II Common-Law Wrongful Discharge (Public Policy Violation)

30. The foregoing paragraphs are incorporated herein in their entirety as if set forth in full.

- 31. Upon information and belief, Plaintiff was terminated in substantial part for making a claim for worker's compensation benefits and/or seeking worker's compensation benefits and/or for his work-related injuries (as discussed *supra*).
- 32. It is against Pennsylvania's public policy for an employee to be terminated for making a worker's compensation claim and/or seeking worker's compensation benefits. These actions as aforesaid constitute wrongful termination in Pennsylvania. *See Shick v. Shirey*, 552 Pa. 590, 716 A.2d 1231 (1997); *Rothrock v. Rothrock Motor Sales, Inc.*, 584 Pa. 297, 883 A.2d 511, 516 (2005).
- 33. The temporal proximity and retaliatory animus between Plaintiff's claim for worker's compensation and his termination creates an inference that his termination was in retaliation for making such a claim.
- 34. These actions as aforesaid constitute wrongful termination in Pennsylvania.

**WHEREFORE**, Plaintiff prays that this Court enter an Order providing that:

- A. Defendant is to promulgate and adhere to a policy prohibiting discrimination and retaliation in the future against any employee(s);
- B. Defendant is to compensate Plaintiff, reimburse Plaintiff, and make Plaintiff whole for any and all pay and benefits Plaintiff would have received had it not been for Defendant's illegal actions, including but not limited to back pay, front pay, salary, pay increases, bonuses, insurance, benefits, training, promotions, reinstatement and seniority;
- C. Plaintiff is to be awarded punitive damages, as permitted by applicable law, in an amount believed by the Court or trier of fact to be appropriate to punish Defendant for its willful, deliberate, malicious and outrageous conduct and to deter Defendant or other employers from engaging in such misconduct in the future;

D. Plaintiff is to be accorded other equitable and legal relief as the Court deems just, proper and appropriate (including but not limited to damages for emotional distress, pain, suffering and humiliation); and

E. Plaintiff is to be awarded the costs and expenses of this action and reasonable attorney's fees as provided by applicable federal and state law.

Respectfully submitted,

KARPF, KARPF, & CERUTTI P.C.

By:

Ari R. Karpf, Esquire 3331 Street Road Two Greenwood Square Suite 128 Bensalem, PA 19020

(215) 639-0801

Dated: February 24, 2021

## IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

### CASE MANAGEMENT TRACK DESIGNATION FORM

Telephone	FAX Number	E-Mail Address			
(215) 639-0801	(215) 639-4970	akarpf@karpf-law.com			
Date	Attorney-at-law	Attorney for			
2/24/2021	A>	Plaintiff			
(f) Standard Management	- Cases that do not fall into a	any one of the other tracks. (X)			
commonly referred to	Cases that do not fall into tra as complex and that need spe side of this form for a detailed	cial or intense management by			
(d) Asbestos – Cases involence exposure to asbestos.	lving claims for personal inju	ry or property damage from ( )			
(c) Arbitration - Cases required to be designated for arbitration under Local Civil Rule 53.2					
(b) Social Security - Cases requesting review of a decision of the Secretary of Health and Human Services denying plaintiff Social Security Benefits.					
(a) Habeas Corpus - Cases brought under 28 U.S.C. § 2241 through § 2255.					
SELECT ONE OF THE	FOLLOWING CASE MAN	AGEMENT TRACKS:			
plaintiff shall complete a C filing the complaint and ser side of this form.) In the designation, that defendan the plaintiff and all other p to which that defendant be	Case Management Track Designer a copy on all defendants. (a event that a defendant does t shall, with its first appearance parties, a Case Management Telieves the case should be assigned.				
Sila Services,	•	NO.			
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(Civ. 660) 10/02

# Case 2:21-cv-00836-GMTED Proches Sistric Filed R2/24/21 Page 9 of 10 FOR THE EASTERN DISTRICT OF PENNSYLVANIA

#### **DESIGNATION FORM**

(to be used by counsel or pro se plaintiff to indicate the category of the case for the purpose of assignment to the appropriate calendar)

Address of Plaintiff: 118 Grain Lynn Drive, Levittown, PA 19057							
Address of Defendant: 290 Hansen Access Road, King of Prussia, PA 19406							
Place of Accident, Incident or Transaction: Defendant's place of business							
RELATED CASE, IF ANY:							
Case Number: Judge: Date Terminated:							
Civil cases are deemed related when <b>Yes</b> is answered to any of the following questions:							
1. Is this case related to property included in an earlier numbered suit pending or within one year Yes No X previously terminated action in this court?							
2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit Yes No X pending or within one year previously terminated action in this court?							
3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action of this court?							
4. Is this case a second or successive habeas corpus, social security appeal, or pro se civil rights  Yes  No   X							
I certify that, to my knowledge, the within case is / is not related to any case now pending or within one year previously terminated action in this court except as noted above.							
DATE: 2/24/2021 ARK2484 / 91538							
Attorney-at-Law / Pro Se Plaintiff Attorney I.D. # (if applicable)							
CIVIL: (Place a √ in one category only)							
CIVIL: (Place a √ in one category only)  A. Federal Question Cases:  B. Diversity Jurisdiction Cases:							
A. Federal Question Cases:  B. Diversity Jurisdiction Cases:  1. Indemnity Contract, Marine Contract, and All Other Contracts  2. FELA  3. Jones Act-Personal Injury  3. Assault, Defamation							
A. Federal Question Cases:    1. Indemnity Contract, Marine Contract, and All Other Contracts   1. Insurance Contract and Other Contracts   2. FELA   2. Airplane Personal Injury   3. Assault, Defamation   4. Antitrust   4. Marine Personal Injury   5. Patent   5. Motor Vehicle Personal Injury   6. Labor-Management Relations   6. Other Personal Injury (Please specify):							
A. Federal Question Cases:    1. Indemnity Contract, Marine Contract, and All Other Contracts   1. Insurance Contract and Other Contracts   2. Airplane Personal Injury   3. Assault, Defamation   4. Antitrust   4. Marine Personal Injury   5. Patent   5. Motor Vehicle Personal Injury   6. Labor-Management Relations   6. Other Personal Injury (Please specify):   7. Civil Rights   7. Products Liability   8. Habeas Corpus   8. Products Liability - Asbestos							
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A. Federal Question Cases:    1. Indemnity Contract, Marine Contract, and All Other Contracts   2. FELA   2. Airplane Personal Injury   3. Assault, Defamation   4. Antitrust   5. Patent   5. Motor Vehicle Personal Injury   6. Labor-Management Relations   7. Civil Rights   7. Products Liability   8. Habeas Corpus   8. Products Liability   8. Securities Act(s) Cases   9. Securities Act(s) Cases   9. Security Review Cases   10. Social Security Review Cases   11. All other Federal Question Cases (Please specify):    ARBITRATION CERTIFICATION (The effect of this certification is to remove the case from eligibility for arbitration.)    Ari R. Karpf   , counsel of record or pro se plaintiff, do hereby certify:    X Pursuant to Local Civil Rule 53.2, § 3(c) (2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs:    Relief other than monetary damages is sought.							

# Case 2:21-cv-00836-CMR\_Document 1\_Filed 02/24/21 Page 10 of 10 CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

purpose of initiating the civil de	ocket sheet. (SEE INSTRUCT	FIONS ON NEXT PAGE OF T	ne United States in September 19 THIS FORM.)	74, is required for the use of th	e Clerk of Court for the	
I. (a) PLAINTIFFS			DEFENDANTS	DEFENDANTS		
MASALSKI, SCOTT			SILA SERVICE	SILA SERVICES, LLC		
(b) County of Residence of First Listed Plaintiff Bucks			County of Residence	County of Residence of First Listed Defendant Montgomery		
(EXCEPT IN U.S. PLAINTIFF CASES)			(IN U.S. PLAINTIFF CASES ONLY)  NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF			
			NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.			
(c) Attorneys (Firm Name, A	= '		Attorneys (If Known)			
Karpf, Karpf & Cerutti, I Suite 128, Bensalem, PA						
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1 U.S. Government X 3 Federal Question Plaintiff (U.S. Government Not a Party)		Not a Party)	PTF DEF  Citizen of This State 1 1 Incorporated or Principal Place 4 4  of Business In This State			
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IV. NATURE OF SUIT		ly) PRTS	FORFEITURE/PENALTY	Click here for: Nature of BANKRUPTCY	of Suit Code Descriptions. OTHER STATUTES	
110 Insurance	PERSONAL INJURY	PERSONAL INJURY	625 Drug Related Seizure	' 422 Appeal 28 USC 158	□ 375 False Claims Act	
<ul><li>120 Marine</li><li>130 Miller Act</li></ul>	' 310 Airplane ' 315 Airplane Product	365 Personal Injury - Product Liability	of Property 21 USC 881  690 Other	' 423 Withdrawal 28 USC 157	' 376 Qui Tam (31 USC 3729(a))	
140 Negotiable Instrument	Liability	367 Health Care/			□ 400 State Reapportionment	
150 Recovery of Overpayment & Enforcement of Judgment	' 320 Assault, Libel & Slander	Pharmaceutical Personal Injury		PROPERTY RIGHTS  820 Copyrights	410 Antitrust 430 Banks and Banking	
151 Medicare Act	' 330 Federal Employers'	Product Liability		3 830 Patent	□ 450 Commerce	
152 Recovery of Defaulted Student Loans	Liability ' 340 Marine	368 Asbestos Personal Injury Product		835 Patent - Abbreviated     New Drug Application	<ul><li>460 Deportation</li><li>470 Racketeer Influenced and</li></ul>	
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153 Recovery of Overpayment of Veteran's Benefits	Liability 350 Motor Vehicle	PERSONAL PROPERT  370 Other Fraud	Y LABOR  710 Fair Labor Standards	' 861 HIA (1395ff)	<ul><li>480 Consumer Credit</li><li>490 Cable/Sat TV</li></ul>	
160 Stockholders' Suits	' 355 Motor Vehicle	371 Truth in Lending	Act	3 862 Black Lung (923)	□ 850 Securities/Commodities/	
<ul><li>190 Other Contract</li><li>195 Contract Product Liability</li></ul>	Product Liability ' 360 Other Personal	380 Other Personal Property Damage	<ul> <li>720 Labor/Management Relations</li> </ul>	' 863 DIWC/DIWW (405(g))  B 864 SSID Title XVI	Exchange  890 Other Statutory Actions	
196 Franchise	Injury	385 Property Damage	740 Railway Labor Act	' 865 RSI (405(g))	891 Agricultural Acts	
	' 362 Personal Injury - Medical Malpractice	Product Liability	' 751 Family and Medical Leave Act		<ul><li>893 Environmental Matters</li><li>895 Freedom of Information</li></ul>	
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210 Land Condemnation	440 Other Civil Rights	Habeas Corpus:	791 Employee Retirement	870 Taxes (U.S. Plaintiff	896 Arbitration	
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<ul><li>245 Tort Product Liability</li><li>290 All Other Real Property</li></ul>	Accommodations	<ul><li>530 General</li><li>535 Death Penalty</li></ul>	IMMIGRATION	-	<ul> <li>950 Constitutionality of State Statutes</li> </ul>	
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V. ORIGIN (Place an "X" in						
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VI. CAUSE OF ACTIO	LADA (42USC121	tute under which you are [01)	filing (Do not cite jurisdictional statu	ttes unless diversity):		
VI. CAUSE OF ACTION	Brief description of ca		nd applicable Pennsylvania	Common Law.		
VII. REQUESTED IN COMPLAINT:  CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.		DEMAND \$				
VIII. RELATED CASI	E(S)			JORI DEMAND.		
IF ANY (See instructions): JUDGEDOCKET NUMBER						
DATE SIGNATURE OF ATTORNEY OF RECORD 2/24/2021						
FOR OFFICE USE ONLY	essel					
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